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No. 86-940

In The

Supreme Court of the United States

October Term, 1986

Pacific First Federal Savings Bank,
Price Waterhouse and
Kaplan, Smith & Associates, Inc.,

Petitioners,

v.

Wayne C. Rembold, Karen D. Rembold,
Darrell Steele and Lyle Schneider,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTION PRESENTED

Whether certiorari should issue to review a decision of the Court of Appeals that the district court had erred in its dismissal for lack of subject matter jurisdiction over plaintiffs' claims under federal and state securities laws because the alleged misrepresentations and omissions that formed the basis of the claims were contained in a stock offering circular issued by a savings and loan institution after its conversion from mutual to stock ownership form of organization.

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Respondents, Wayne C. Rembold, Karen D. Rembold, Darrell Steele and Lyle Schneider respectfully pray that the petition for certiorari to review the opinion and judgment entered in this proceeding by the United States Court of Appeals for the Ninth Circuit on September 3, 1986, be denied.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 798 F.2d 1307 and is included in the Appendix to the Petition for Certiorari (Petitioners' Appendix at pp. 1a-12a). The opinion of the United States District Court for the District of Oregon is unreported. This opinion and order is included at pp. 13a-22a of Petitioners' Appendix.

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JURISDICTION

The jurisdictional prerequisites are adequately set forth in the Petition.

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STATEMENT OF THE CASE

Background

This lawsuit arises out of the sale of stock in Petitioner, Pacific First Federal Savings Bank ("Pacific First"), and the purchase of shares of this stock by Respondents pursuant to a subscription offering circular on or about July 16, 1983. The Respondents filed suit in the United States District Court for the District of Oregon in February, 1985 alleging violations of §§ 12(2) and 17(a) of the Securities Act of 1933, 15 U.S.C. § 77l and 15 U.S.C. § 77q, and § 10b of the Securities Exchange Act of 1934, 15 U.S.C. § 78j and Rule 10b-5 promulgated thereunder, 17 C.F.R. 240.10 (b-5), as well as pendent state claims under the Oregon and Washington securities laws and

common law claims for fraud and negligence. These claims, as set forth in the complaint, are predicated upon certain misrepresentations and material omissions in the subscription offering materials upon which Respondents relied in the purchase of their stock. The entire complaint is reproduced in the Respondents' Appendix (Appendix 1a through 15a) to dispel any confusion as to the nature of Respondents' claims caused by Petitioners' mischaracterization of the complaint.

Petitioners moved the district court to dismiss the complaint on ten separate grounds, including the lack of subject matter jurisdiction and failure to state a claim on which relief could be granted. The district court, without reaching any of the other grounds for dismissal, dismissed the suit for lack of subject matter jurisdiction after finding that the respondents' claims constituted a challenge to the conversion process approved by the Federal Home Loan Bank Board (FHLBB) by which Pacific First had converted from a mutual savings and loan to a stock form of organization. The district court held that it lacked jurisdiction because of the exclusive jurisdiction vested in the Court of Appeals to review conversion-related orders of the FHLBB contained in § 402(j)(2) and 408(k) of the National Housing Act, 12 U.S.C. 1464(i)(4) (1982) and 12 U.S.C. 1730a(k) (1982). The district court relied for its holding solely on the Tenth Circuit decision in *Harr v. Prudential Federal Savings and Loan Association*, 557 F.2d 751 (10th Cir. 1977), *cert. denied*, 434 U.S. 1033 (1978). (Petitioners' Appendix at pp. 20a-22a.)

Respondents appealed this dismissal to the United States Court of Appeals for the Ninth Circuit. The Ninth

Circuit reversed the district court and held that the district court had erred in concluding that it lacked subject matter jurisdiction over the common law and securities claims asserted by Respondents. The Court of Appeals found that the National Housing Act contained neither an explicit nor implied repeal of the antifraud remedies of the securities laws. The court further found no incompatability between the remedies provided by these statutes. The Court of Appeals rejected petitioners' interpretation of the law that the only remedy for defrauded investors was an appeal to the Court of Appeals within 30 days of a FHLBB final order approving conversion, and characterized this remedy as "futile" and "patently unreasonable." The court found that Respondents, unlike the plaintiffs in *Harr* and *Craft v. Florida Federal Savings & Loan Association,* 786 F.2d 1546 (11th Cir. 1986), had alleged cognizable securities fraud claims over which the district court had jurisdiction.

REASONS FOR DENYING THE WRIT

The Petition for Certiorari should not be granted to review the decision of the Court of Appeals because (1) the decision does not present a conflict among the circuits and (2) the decision does not present an important question of federal law and will have no impact on the operations of the Federal Home Loan Bank Board or on the future conversion of mutual savings and loans associations to stock ownership institutions.

I. The Court Of Appeals' Decision Does Not Present A Conflict Within The Circuits.

Petitioners assert that the Court of Appeals' decision below is in direct conflict with decisions by the 10th Circuit in *Harr v. Prudential Federal Savings and Loan Association,* 557 F.2d 751 (10th Cir. 1977), and the Eleventh Circuit in *Craft v. Florida Federal Savings & Loan Association,* 786 F.2d 1546 (11th Cir. 1986). There is no such conflict as the Ninth Circuit correctly noted in its opinion. (Petitioners' Appendix at pp. 8a-11a).

In *Harr,* the plaintiffs, who had received free stock in the converted institution as depositors, challenged certain aspects of the plan of conversion in the district court, and simultaneously appealed the FHLBB final order to the Court of Apeals pursuant to 12 U.S.C. § 1730a(k), attaching the fairness of the plan. Both the decision on the appeal from the district court's dismissal of the former action, and the decision on the direct appeal of the FHLBB's conversion order were decided by the same judge on the same day. *Harr v. Federal Home Loan Bank,* 557 F.2d 747 (10th Cir. 1977), *cert. denied,* 434 U.S. 894 (1978) and *Harr v. Prudential Federal Savings and Loan Association,* 557 F.2d 751 (10th Cir. 1977). The gravamen of both suits was an attack on the fairness of the conversion plan because of the date chosen by the savings and loan for determining the amount of free stock to be distributed to depositors. The plaintiffs' allegations of securities fraud in the district court case, which the Tenth Circuit described as "at best a secondary or derivative position", 557 F.2d at 753, related solely to alleged defects in proxy solicitation materials requesting depositor approval of the conversion.

These proxy materials, which were also challenged in the second suit as being in violation of FHLBB regulations, had been examined and approved by the FHLBB pursuant to 15 U.S.C. § 78i. Thus, the Court of Appeals in the *Harr* decision never reached the issue on which the Ninth Circuit based its decision, "whether Congress intended to deprive a district court of the jurisdiction to hear common law and federal and state securities law violations in a stock offering issued after conversion of a mutual bank to a stock form of organization." (Petitioners' Appendix at 4a).

In *Craft v. Florida Federal Savings & Loan Association,* 786 F.2d 1546 (11th Cir. 1986)[1] the Eleventh Circuit was similarly not faced with the issue before the Ninth Circuit in the instant case. In *Craft,* the plaintiffs' securities claims, which the court described as "bare bones allegations", were directed at the large increase in the amount of stock to be offered for sale in the public offering that followed the subscription offering in which plaintiffs had puchased their stock. *Id.* at 1554. The plaintiffs in *Craft* challenged the FHLBB's failure to require rescission of the purchases under the subscription offering and a recirculation of this offering after the decision was made to significantly increase the amount of stock sold. In discounting these claims, the Court of Appeals noted that the complaint failed to "allege any false or misleading statements." *Id.* The court found that a challenge to this alleged deficiency was, in reality, a challenge to the plan itself in that the FHLBB had not required such a recirculation. Finally the *Craft* court specifically warned that

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[1]The *Craft* appeal was decided after submission of the briefs in the instant matter, but prior to argument.

it was not deciding the issue that the Ninth Circuit addressed in the instant case:

> Before departing from this subject we add this word of caution. We are not called upon here to decide, nor do we express any views concerning the jurisdiction *vel non* of the district court under the federal securities laws when securities fraud is properly alleged and there has been Bank Board approval of a savings and loan conversion.

Id. at 1554.

In the instant case, the complaint (Appendix at pp. 1a-15a) relies solely on alleged misrepresentations and material omissions contained in the subscription offering circular upon which respondents relied in making their decision to purchase the stock. As this court has recognized, the very essence of the antifraud provisions of the securities laws is to implement a policy of full disclosure. *Santa Fe Industries v. Green*, 430 U.S. 462, 478 (1977). It is this lack of full and accurate disclosure, and not the fairness of the conversion plan, or the price of the stock, that is the crux of this case.

The alleged misrepresentations and omissions in the instant case are not "part and parcel of the plan of conversion." *Harr v. Prudential Federal Savings and Loan Association*, 557 F.2d at 754. The accuracy of the contents of the subscription offering circular, about which respondents complain, was specifically not passed upon by FHLBB. A disclaimer to this effect is required to be printed in the offering circular, 12 C.F.R. § 563b.7(d), and did, in fact, appear in the Pacific First circular. These securities allegations are not extraneous claims added to circumvent the exclusive review of conversion plans by the

Court of Appeals, but rather form the very heart of the Complaint. Thus, as the Ninth Circuit correctly concluded, no conflict exists between this decision and those of the Tenth Circuit in *Harr* and the Eleventh Circuit in *Craft*.

II. The Decision Presents No Important Questions Of Federal Law And Will Have No Effect On The Functions Of The FHLBB Or On The Process Of Conversion Of Savings And Loan Associations To Stock Ownership Organizations.

A. The Decision Will Not Adversely Affect the Savings and Loan Industry.

Petitioners assert that the Court of Appeals' decision will undermine FHLBB's control over conversions of savings and loans. They forecast dire consequences that will lead to the decline of the entire savings and loan industry if the decision is allowed to stand. Such hysterical predictions are completely unjustified. The Court of Appeals' decision merely follows this court's holding in *Tcherepnin v. Knight*, 389 U.S. 332 (1967) that instruments that otherwise fall within the definition of securities, that are issued by savings and loans are subject to claims under § 10b of the Securities Exchange Act of 1934 and Rule 10-b(5) promulgated pursuant to it. The effect of the Ninth Circuit's decision merely preserves for Petitioners, and other purchasers of stock in the subscription offering of converting savings and loans, a reasonable opportunity for redress if they relied upon misrepresentations and material omissions in the offering materials. There is no inconsistency between the recognition of this remedy and either the letter, or spirit, of the statutes cited by petitioners or the regulations of the FHLBB. Both, as the

Court of Appeals noted, "protect shareholders who purchase stock in a savings institution from violations of the law." (Petitioners' Appendix at p. 6a).

To support their assertion of a threat to the industry, petitioners incorrectly characterize the relief which Respondents seek as requiring the modification or unwinding of the Pacific First conversion (Petition at p. 12). Such an assertion is without support. The complaint seeks only the measure of damages to which defrauded investors are entitled upon proof of a violation of the securities laws. (Appendix at pp. 14a-15a). Such relief amounts to money damages and not the setting aside of the conversion plan. Respondents have not, and do not, challenge the fairness of the conversion plan or the price of the stock as did the plaintiffs in *Craft* or *Harr*. The claims alleged in this case are those of a "garden variety" securities fraud suit based upon an offering circular, the accuracy or adequacy of which were never endorsed by the FHLBB.

B. The Decision of the Court of Appeals is Apparently One of First Impression.

Petitioners' assertion of the importance of the decision below is belied by the fact that despite the 470 conversions over the past ten years (Petition at p. 9) the Court of Appeals' decision below is apparently the first reported decision on this issue. Even conceding, for the sake of argument, that *Harr* and *Craft* deal tangentially with the same issue, there is still a relative paucity of cases dealing with the relation between the securities laws and the National Housing Act and regulations relating to stock issued by converting savings and loan institutions. This

court should not review these matters at this early stage in the development of the case law.

C. The Decision Correctly Applied the Test to Determine That There Was Jurisdiction and Did Not Rule on the Merits of Respondents' Claims.

The Court of Appeals correctly declined to analyze the merits of respondents' claims in determining whether there was subject matter jurisdiction. As this court has long recognized:

> Jurisdiction . . . is not defeated . . . by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover. For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction . . .

Bell v. Hood, 327 U.S. 678, 682 (1946).

The court went on to describe the limited exceptions to the rule articulated above as follows:

> that a suit may sometimes be dismissed for want of jurisdiction where the alleged claim under the constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous.

Id. at 682-3.

The claims asserted in the instant case, like those asserted in *Bell,* are not immaterial, insubstantial or frivolous and clearly present a claim for recovery under the laws of the United States. Contrary to respondents' assertion, the district court did not find otherwise. The federal securities claims are not interposed for purposes of

obtaining federal jurisdiction but go to the essence of respondents' case. The Court of Appeals correctly applied this rule, and therefore found that an analysis of the merits of these claims on a motion to dismiss for lack of subject matter jurisdiction was inappropriate.

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari is without merit and should be denied.

DATED: January 8, 1987

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

WAYNE C. REMBOLD and KAREN D. REMBOLD, CLINT HERGERT, HENRY GRIFFIN, DARRELL STEELE, and LYLE SCHNEIDER, Plaintiffs, v. PACIFIC FIRST FEDERAL SAVINGS BANK, a federally chartered stock savings bank in the State of Washington, PRICE WATERHOUSE & CO., a partnership, and KAPLAN, SMITH & ASSOCIATES, INC., a Washington, D.C. corporation, Defendants.	Civil No. 85-224 COMPLAINT FOR SECURITIES LAW VIOLATION JURY TRIAL DEMANDED (Filed February 6, 1985)

Plaintiffs allege:

JURISDICTION AND VENUE

1. Counts One and Two arise under Sections 12 and 17 of the Securities Act of 1933, 15 U.S.C. § 77l and 15 U.S.C. § 77q. Jurisdiction for these Counts is conferred by 15 U.S.C. § 77v. Count Three arises under Section 10 of the Securities Exchange Act of 1934 and Rule 10b-5

promulgated thereunder, 15 U.S.C. § 78j and 17 C.F.R. 240.10(b-5). Jurisdiction for this count is conferred by 15 U.S.C. § 78aa. Jurisdiction for Counts Four, Five, Six, Seven, Eight, Nine, and Ten arises under the same statutes and under the principles of pendent jurisdiction. The acts alleged in this complaint took place in part in the State of Oregon, including the sales of securities.

DESCRIPTION OF PARTIES

2. On or about July 16, 1983, plaintiffs purchased stock in defendant Pacific First Federal as set out below:

(a) Wayne and Karen D. Rembold (Rembold) are husband and wife and residents of Portland, Oregon. Karen D. Rembold, in Oregon, subscribed for and purchased 130,000 shares of Pacific First Federal stock at $15 per share for $1,950,000.00. On or about November 9, 1983, Karen Rembold transferred all the stock to Wayne Rembold without realizing any gain or loss. At approximately the same time, Wayne Rembold transferred an additional 11,812 shares without realizing any gain or loss, leaving a total of 118,188 shares at risk with a total investment of $1,772,820.00. At all material times, plaintiffs Rembold were acting on behalf of and on account of and in a fiduciary relationship to one another.

(b) Clint Hergert is a resident of Auburn, Washington who subscribed for and purchased in that state 66,863 shares of Pacific First Federal stock at $15 per share for a total investment of $1,002,945.00.

(c) Henry Griffin is a resident of Tacoma, Washington who subscribed for and purchased in that state 66,863 shares of Pacific First Federal stock at $15 per share for a total investment of $1,002,945.00.

(d) Darrell Steele is a resident of Bellevue, Washington who subscribed for and purchased in that state 5000 shares of Pacific First Federal stock at $15 per share for a total investment of $75,000.00.

(e) Lyle Schneider is a resident of San Francisco, California who subscribed for and purchased in the state of Washington 60,000 shares of Pacific First Federal stock at $15 per share for a total investment of $900,000.00.

3. Pacific First Federal Savings Bank ("Pacific First Federal" or "the Bank") is a federally chartered stock savings bank with its home office in Tacoma, Washington, transacting business in Oregon and other states.

4. Defendant Price Waterhouse & Co. (Price Waterhouse) is a partnership with numerous partners throughout the United States engaged in the business of providing accountant services. Price Waterhouse transacts business in Oregon and other states.

5. Defendant Kaplan, Smith & Associates, Inc. ("Kaplan, Smith") is a Washington, D.C. corporation, engaged in the business of financial consulting. Kaplan, Smith transacts business in Oregon and other states.

FACTS RELEVANT TO ALL CLAIMS FOR RELIEF

6. On or about June 15, 1983, defendant Pacific First Federal, as part of a plan by which it converted from a federal mutual to a federal stock savings bank, issued and offered 5,800,000 shares of common stock for sale to depositors, employees, officers and others at a price eventually set at $15 per share ("the offering.")

7. Information concerning the offering was distributed to prospective purchasers of the stock, including plaintiffs, by defendant Pacific First Federal, by means of a Subscription Offering Circular dated June 15, 1983. The Subscription Offering Circular was prepared by the Bank with the assistance of defendant Price Waterhouse, which prepared the audited financial statements and with the assistance of defendant Kaplan Smith which prepared the stock valuation.

8. As a result of and in response to the offering, and in reliance on the Subscription Offering Circular, and without knowledge of the untruths or omissions as set forth in paragraphs 9 and 10, plaintiffs purchased Pacific First Federal stock as set out with more particularity in paragraph 2.

9. The Subscription Offering Circular contained the following misrepresentations:

(a) The statement of projected future earnings of Pacific First Federal was significantly and materially in excess of actual reasonably anticipated earnings;

(b) The value of real estate owned by Pacific First Federal was significantly and materially overstated; and

(c) The value of loans outstanding to Pacific First Federal was significantly and materially overstated.

10. The Subscription Offering Circular omitted and failed to state the following material facts which were necessary to be made, in order to make the statements which were made, in light of the circumstances under which they were made, not misleading:

(a) That an investor in the offered securities took a risk that the value of the security could go down, or that the Bank could go out of business and the entire investment lost;

(b) That the strategy for the management of Pacific First Federal was such that the short-term value of the stock was likely to decrease precipitously in the uncertain hope of ultimate long-term recovery;

(c) That a subsequent offering of Pacific First Federal stock was anticipated and had, in fact, already begun and that this subsequent offering would dilute the value of the stock purchased pursuant to the first offering and would be likely to drive down the value of the stock;

(d) That a subsequent offering as set forth in (c) above would create a market in which purchasers in the original offering would not be able to sell their stock until approximately three weeks had passed;

(e) That is the event of a subsequent offering as set forth in (c) above, purchasers such as plaintiffs would not be able to modify or cancel their subscriptions;

(f) That the value assigned to the real estate owned by Pacific First Federal in the Subscription Offering Circular was not fair market value and that there was a significant possibility, based upon the past experience of Pacific First Federal, that the value assigned was greatly in excess of fair market value;

(g) That the value assigned to Pacific First Federal's loan portfolio was not fair market value and that there was a significant possibility, based upon the experi-

ence of the Bank, that the value assigned was greatly in excess of fair market value;

(h) That the reserves set aside to cover future losses were insufficient to cover anticipated losses; and

(i) That the fair market value of Pacific First Federal's loan portfolio and other real estate owned by Pacific First Federal was unknown.

COUNT ONE

1933 Securities Act, Violation of § 12(2), 15 U.S.C. § 77l(2) Against All Defendants

11. Defendant Pacific First Federal offered and sold the Pacific First Federal stock purchased by plaintiffs. The Bank either knew or failed to exercise reasonable care to determine whether the information contained in the Subscription Offering Circular, as set out in paragraphs 9 and 10 was inaccurate.

12. Defendant Price, Waterhouse participated in and aided and abetted the offer and sale of the Pacific First Federal stock purchased by plaintiffs in that Price, Waterhouse prepared the financial statements contained in the Subscription Offering Circular and the information set forth in subparagraphs (b) and (c) of paragraph 9 and in subparagraphs (f), (g), (h) and (i) of paragraph 10 of this Complaint. Price Waterhouse knew or should have known that the statements it prepared would be used in the Subscription Offering Circular and that it would be relied upon by plaintiffs, and Price Waterhouse failed to use reasonable care to see that the information was accurate and presented in a manner that was not misleading to investors, including plaintiffs.

13. Defendant Kaplan, Smith participated in and aided and abetted the sale of Pacific First Federal stock to plaintiffs in that Kaplan, Smith prepared a valuation of the stock to be issued by the Bank and it consented to the use of a summary of its valuation in the Subscription Offering Circular which summary did appear therein. Kaplan, Smith knew or should have known that the summary of its valuation would be relied upon by plaintiffs in their purchase of the Bank's stock. The valuation prepared by Kaplan, Smith and the summary of valuation which appeared in the Subscription Offering Circular contained omissions of material facts necessary to be made in order to make the summary of the valuation, in light of the circumstances under which it was disclosed, not misleading, which omissions Kaplan, Smith knew or in the exercise of reasonable care should have known, including:

(a) The consolidated financial statements appearing in the Subscription Offering Circular did not properly or adequately reflect the true fair market value of real estate owned by the Bank and loans owed to the Bank which true market value was significantly lower than the values disclosed; and

(b) The valuation and its summary did not account for the true fair market value of real estate owned by the Bank and loans owing to it, but was based on a higher value.

14. The falsity of the statements set out in Paragraph 9 and the omissions set out in Paragraphs 10 and 13 were not discovered by plaintiffs and could not have been discovered by them to have been false or misleading until after February 6, 1984, when defendant Pacific First Fed-

eral issued a press release, which for the first time, disclosed substantial loan and real estate losses. The losses were disclosed by a restatement of the value of the Bank's loan portfolio and real estate properties which was more closely in accord with actual fair market value.

15. Plaintiffs Rembold, Hergert, and Griffin still own all or some of the shares of stock which they purchased in Pacific First Federal.

16. Plaintiffs Schneider, Rembold and Steele have sold all or some of their stock in Pacific First Federal for the amounts set out below and are entitled to damages, also as set out below, plus prejudgment interest from the date of purchase to the date of sale.

Plaintiff	No. of Shares Sold	Amount	Loss on Sale
Steele	5,000	$ 43,618.90	$ 31,381.10
Schneider	60,000	$435,625.00	$464,375.00
Rembold	45,200	$466,587.50	$212,812.50

17. Plaintiffs Hergert, Griffin and Rembold expect to sell their remaining stock in the future but are now willing to rescind their purchases and do thereby tender all their remaining stock in the Bank. They are therefore entitled to damages in the amount of their original purchases as set forth in Paragraph 2, together with prejudgment interest from the date of purchase, less the proceeds of sales and interest from the date of sale.

18. Defendants' acts constitute a violation of § 12(2) of the Securities Act of 1933, 15 U.S.C. § 77l(2).

COUNT TWO

1933 Securities Act, Violation of § 17a, 15 U.S.C. § 77q(a) Against All Defendants

19. Plaintiffs reallege Paragraphs 1 through 18.

20. Defendants, with the use and means of instruments of transportation and communication in interstate commerce and by the use of the mails in sending the Subscription Offering Circular and other promotional materials to investors and in contacting investors, employed a device, scheme and artifice to defraud and to obtain money and property by means of untrue statements of material fact and by means of omissions of material facts necessary to make the statements made not misleading and further engaged in transactions, practices and in a course of business that operated as a fraud and deceit on plaintiffs.

21. Defendants knew or recklessly failed to determine the true facts which they misrepresented to plaintiffs and knew or recklessly failed to determine the facts which they omitted to state to plaintiffs. Defendants intended that plaintiffs rely on their misrepresentations and plaintiffs did rely in making their purchases.

22. Defendants' acts constitute a violation of § 17a of the Securities Act of 1933, 15 U.S.C. § 77q.

COUNT THREE

Securities Exchange Act of 1934,
Violation of § 10b, 15 U.S.C. § 78j(b)
Against All Defendants

23. Plaintiffs reallege Paragraphs 1 through 18, above.

24. All defendants knew the true nature of the facts which were misrepresented to plaintiffs in the Subscription Offering Circular, or recklessly failed to ascertain whether the facts represented to plaintiffs were true. Defendants knew or recklessly failed to learn the facts that they omitted to state to plaintiffs and knowingly or recklessly failed to disclose those facts to plaintiffs, even though they knew or should have known that said facts were unknown to plaintiffs and that plaintiffs would rely upon the misrepresentations in purchasing the stock.

25. Defendants' acts constitute a violation of § 10b of the Securities Exchange Act of 1934 and Rule 10b-5, 15 U.S.C. § 78j(b) and 17 C.F.R. 240.10(b-5).

COUNT FOUR

Oregon Securities Law Violation of ORS 59.115
Against All Defendants—Plaintiff Rembold

26. Plaintiffs reallege Paragraphs 1 through 18.

27. The acts of defendants, as described above, constitute violations of ORS 59.115(1)(b) in that the defendants offered or sold or aided and abetted or participated in the offer and sale of securities to plaintiffs Rembold in Oregon by means of an untrue statement of a material fact or an omission to state a material fact necessary in

order to make the statements made, in light of the circumstances under which they were made, not misleading (plaintiff Rembold not knowing of the untruth or omission).

28. Plaintiff Rembold has been required to retain an attorney to recover the damages due him under the Oregon Securities law and he is entitled to recover from defendants a reasonable attorney fee as set by the court pursuant to ORS 59.115(2).

COUNT FIVE

Securities Act of Washington Violation of RCW 21.20.430 Against All Defendants—All Plaintiffs Except Rembold

29. Plaintiffs reallege Paragraphs 1 through 18.

30. The acts of defendants, as described above, constitute violations of RCW 21.20.430 in that said defendants sold or aided and abetted or participated in the sale of securities in Washington to plaintiffs Hergert, Griffin, Steele, and Schneider by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

31. Plaintiffs have been required to retain an attorney to recover the damages due them under the Washington Securities law and plaintiffs are entitled to recover from defendants a reasonable attorney fee as set by the court pursuant to RCW 21.20.430.

COUNT SIX

Common Law Fraud Against All Defendants

32. Plaintiffs reallege Paragraphs 1 through 18, above.

33. The misrepresentations of defendants as set out in Paragraph 9 were known by defendants to be false at the time they were made and the omissions to state material facts as set out in Paragraphs 10 and 13 were knowingly omitted and were known by defendants to be misleading and the misrepresentations and omissions were intended by defendants to be relied upon by plaintiffs or similar persons in plaintiffs' position.

34. Plaintiffs did rely on the representations set forth above in making their purchases of Pacific First Federal stock.

COUNT SEVEN

Negligence Against Defendant Pacific First Federal

35. Plaintiffs reallege Paragraphs 1 through 18, above.

36. Defendant Pacific First Federal breached a duty of care to plaintiffs in that it negligently disclosed false statements of fact as set out in paragraph 9 and negligently failed to disclose material facts which should have been disclosed as set out in paragraph 10.

COUNT EIGHT

Negligence Against Defendant Price Waterhouse

37. Plaintiffs reallege Paragraphs 1 through 18, above.

38. Defendant Price Waterhouse breached a duty of care to plaintiffs in that it negligently failed:

(a) To determine if the values shown in the consolidated financial statements in the Subscription Offering Circular of real estate owned by and loans owing to the Bank were significantly and materially overstated;

(b) To note on the consolidated financial statement in the Subscription Offering Circular that the values of real estate owned by and loans owing to the Bank as sohwn on the consolidated financial statement could be materially and substantially in excess of true market value;

(c) To determine if the method used by Pacific First Federal to evaluate real estate it owned and loans owing to it were reasonably likely to result in a valuation in proximity to fair market value; and

(d) To make adequate and reasonable investigation to determine if significant and permanent declines in the value of loans owed to the Bank and real estate owned by the Bank had occurred over and above those disclosed on the consolidated financial statement.

COUNT NINE

Negligence Against Defendant Kaplan, Smith

39. Plaintiffs reallege Paragraphs 1 through 18, above.

40. Defendant Kaplan, Smith breached a duty of care to plaintiffs in preparing its valuation, in that:

(a) It failed to account for the difference between the value of the loans to the Bank and real estate owned by the Bank as disclosed in the consolidated financial statement and the actual fair market value of said loans and real estate; and

(b) It placed too much emphasis on short-term securities market factors at the expense of long-term market factors, long-term economic conditions in the Bank's business area and over-all economic strength of the Bank.

COUNT TEN

Breach of Fiduciary Duty Against Defendant Pacific First Federal

41. Plaintiffs reallege Paragraphs 1 through 18, above.

42. At the time of the stock purchases by plaintiffs, all plaintiffs were banking customers of the Bank and reposed special confidence and trust in the Bank to make a full and fair disclosure in all dealings between the Bank and plaintiffs.

43. Defendants' acts were wilful, wanton and reckless, and in aggravated disregard for the rights of plaintiffs.

WHEREFORE, plaintiffs pray for relief as follows:

1. For damages as set out in Paragraphs 16 and 17, including prejudgment interest;

2. For reasonable attorney fees and all costs of investigation and litigation reasonably incurred herein;

3. For punitive damages for plaintiff Rembold in the amount of $5,800,000; and

4. For such other relief as the court deems just and equitable.

Respectfully submitted,

/s/ Daniel H. Rosenhouse
N. Robert Stoll
Justine Fischer
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Attorneys for Plaintiffs

N. Robert Stoll, Trial Attorney

Plaintiffs respectfully request trial by jury.

/s/ Daniel H. Rosenhouse